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SHEARMAN & STERLING LLP
STEPHEN D. HIBBARD (Bar No. 177865)
shibbard@shearman.com
EMILY V. GRIFFEN (Bar No. 209162)
emily.griffen@shearman.com
525 Market Street, Suite 1500
San Francisco, CA 94105
Telephone: 415-616-1100
Facsimile: 415-616-1199

JENNER & BLOCK LLP
DONALD B. VERRILLI, JR. (*pro hac vice*)
dverrilli@jenner.com
WILLIAM M. HOHENGARTEN (*pro hac vice*)
whohengarten@jenner.com
SCOTT B. WILKENS (*pro hac vice*)
swilkens@jenner.com
1099 New York Ave, N.W.
Suite 900
Washington, DC 20001-4412
Telephone: 202-639-6000
Facsimile: 202-639-6066
Attorneys for Viacom Plaintiffs

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
BLAIR A. NICHOLAS (Bar No. 178428)
12481 High Bluff Drive, Suite 300
San Diego, CA 92130
Telephone: 858-793-0070
Facsimile: 858-793-0323
Email: blairn@blbglaw.com

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
DAVID R. HASSEL (*pro hac vice*)
1285 Avenue of the Americas
New York, NY 10019
Telephone: 212-554-1400
Facsimile: 212-554-1444
Email: davidh@blbglaw.com
Attorneys for Premier League Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

VIACOM INTERNATIONAL INC., ET AL.,

Plaintiffs,

v.

YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE INC.,

Defendants.

THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, ET AL.,

Plaintiffs,

v.

YOUTUBE, INC., ET AL.,

Defendants.

Case No.: 3:08-MC-80129-SI

REPLY DECLARATION OF SCOTT B. WILKENS IN SUPPORT OF JOINT MOTION TO COMPEL PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENAS TO ARTIS CAPITAL MANAGEMENT L.P., SEQUOIA CAPITAL OPERATIONS LLC, AND TRIPLEPOINT CAPITAL LLC

Date: Aug. 15, 2008
Time: 9:00 a.m.
Ctrm: Ten
Honorable Susan Illston

Dockets.Justia.com

I, Scott B. Wilkens, hereby declare as follows:

1. I am an attorney at the law firm of Jenner & Block LLP, located at 1099 New York Avenue, Suite 900, Washington, D.C. 20001, and a member in good standing of the Bars of the State of California and the District of Columbia. I am counsel to Plaintiffs in connection with the litigation styled *Viacom International, Inc., et al. v. YouTube, Inc., et al.*, Civil Action No. 07-cv-02103, currently pending in the United States District Court for the Southern District of New York. I submit this reply declaration and attached exhibits in support of the Joint Motion to Compel Production of Documents Pursuant to Subpoenas Issued to Artis Capital Management, L.P., Sequoia Capital Operations LLC, and TriplePoint Capital LLC, filed on June 20, 2008. Except as expressly or implicitly indicated, I have personal knowledge of the matters stated in this declaration.

2. I am informed that a comparison of the limited document production by TriplePoint Capital LLC ("TriplePoint") with the more than one million pages of documents produced by Defendants Google and YouTube ("Defendants") indicates that numerous documents produced by TriplePoint have not been produced by Defendants. These documents include the March 2006 Presentation by YouTube, attached as Ex. MM to my June 20, 2008 Declaration ("Wilkens June 20, 2008 Decl."); executed versions of TriplePiont's lease and warrant agreements with YouTube (Bates Nos. TP000014-27, TP000199-228), one of which is attached as Ex. R to the Wilkens June 20, 2008 Decl., and YouTube internal financial information that was provided to TriplePoint (Bates Nos. TP000496-97; TP000862).

3. Attached hereto as Ex. A is a true and correct copy of the motion to compel filed in *Visto Corp. v. Smartner Information. Systems, Ltd.*, No. 06-80339, 2007 WL 218771 (N.D. Cal. Jan. 29, 2007).

4. Attached hereto as Ex. B is a true and correct copy of an April 6, 2007 letter from Donald B. Verrilli, Jr., counsel for the *Viacom* Plaintiffs, to Melinda A. Dunn, Chief Financial Officer of Sequoia Operations LLC ("Sequoia").

5. From September to December 2007, Defendants issued subpoenas to third parties Iced Media Ltd., MediaDefender, Inc., BayTSP.com, Deluxe Laboratories, Inc., and JL Media Inc. These

subpoenas seek documents that are likely to be in the possession of the *Viacom* Plaintiffs, including, for example, communications between the subpoenaed entities and Viacom.

6. Attached hereto as Ex. C is a true and correct copy of a July 27, 2008 Order Denying Joint Request For Entry of "Stipulated" Protective Order, in *In re Subpoena to Auditude, Inc.*, Case No.: 08-80139 MISC JF (PVT).

7. Attached hereto as Ex. D is a true and correct copy of an excerpt from the transcript of a July 15, 2008 hearing before the Honorable Louis L. Stanton, United States District Court for the Southern District of New York, in *The Football Association Premier League, et al. v. YouTube, Inc., et al.*, Case No. 07-cv-3582 (LLS).

8. Attached hereto as Ex. E is a true and correct copy of an excerpt from the transcript of an August 1, 2008 hearing before the Honorable Louis L. Stanton, United States District Court for the Southern District of New York, in *The Football Association Premier League, et al., v. YouTube, Inc., et al.*, Case No. 07-cv-3582 (LLS).

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true and correct and that this Declaration was executed on August 4, 2008 at Washington, DC.

[signature]

Scott B. Wilkens